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No. 39

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

RICHARD HALL AND CHRISTINE HALL, *Appellants*,

v.

HARRIET BEALS, Clerk and Recorder of El Paso County, and BESS TITUS, Election Supervisor of El Paso County, *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF AMICUS CURIAE FOR BIPARTISAN COMMITTEE ON ABSENTEE VOTING

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INDEX

	Page
Interest of Amicus	1
Statement	4
Argument	8
I. Only a Paramount Colorado Interest Could Justify Denial to its Genuine Domiciliary-Citizen of the Ballot in a Presidential Elector Election	8
II. No Tangible State Interest Supports Imposing on Bona Fide New Citizens of Colorado a Waiting period for Eligibility to Participate in a Presidential Election	14
i. Fraudulent Claim of State Citizenship	17
ii. Double Voting	18
iii. Knowledge of Local Candidates	18
III. Widespread Disenfranchisement Under Existing Voting Residence Laws Calls for Recognition of the State's Constitutional Duty to Afford all its Qualified Citizens full Opportunity for Participation in Presidential Elector Elections Irrespective of the Length or Place of Their Residence or Sojourn	21
Conclusion	25
Appendix A	26
Appendix B	33

Table of Cases

Bullington v. *Grabow*, 88 Colo. 561, 29 P. 1059	5
Burroughs v. *United States*, 290 U.S. 534	11
Drueding v. *Devlin*, 234 F. Supp. 721 (D.Md.)	15
Ex parte Yarbrough, 110 U.S. 651	10
French v. *Lighty*, 9 Ind. 475	5
Fry's Election Case, 71 Pa. 302	5
Gallagher v. *Board of Elections*, 219 Md. 192; 148 A. 2d 390	15
Grey v. *Huntley*, 77 Colo. 478, 238 P. 53	5
Hall v. *Beals*, 292 F. Supp. 610 (D. Colo.)	17

Case—Continued	Page
Harper v. *Virginia Board of Elections*, 383 U.S. 663	10
Jain v. *Bossen*, 27 Colo. 423, 62 P. 194	5
Kellner v. *District Court*, 127 Colo. 320, 256 P. 2d 887	5
Kellogg v. *Hickman*, 12 Colo. 256, 21 P. 325	5
Kramer v. *Union Free School District*, 89 S. Ct. 1886	8, 9, 10, 13, 14
McPherson v. *Blacker*, 146 U.S. 1	10, 23
Morris v *Gilmer*, 129 U.S. 315	7
Paudler v. *Paudler*, 185 F. 2d 901 (C.A. 5), *cert. den.*, 341 U.S. 920	7
People v. *Chrysler*, 83 Colo. 355, 265 P. 92	6
People ex rel Rogers v. *Estate of Waterman*, 108 Colo. 263, 116 P. 2d 204	20
Reynolds v. *Sims*, 377 U.S. 533	23
Schneider v. *Rusk*, 377 U.S. 163	16, 24
Shapiro v. *Thompson*, 89 S. Ct. at 1335	8, 12
Sharp v. *McIntire*, 23 Colo. 99, 46 P. 115	5
Smith v. *Allwright*, 321 U.S. 649	10
State v. *Aldrich*, 14 R.I. 171	5
Sun Printing and Publishing Association v. *Edwards*, 194 U.S. 377	7
Swafford v. *Templeton*, 185 U.S. 487	10
Twining v. *New Jersey*, 211 U.S. 78	10
United States v. *Classic*, 313 U.S. 299	10
United States v. *Mosley*, 238 U.S. 383	10
United States v. *Saylor*, 322 U.S. 385	10
Wesberry v. *Sanders*, 376 U.S. 1	12
Wiley v. *Sinkler*, 179 U.S. 58	10
Williamson v. *Osenton*, 232 U.S. 619	7
Williams v. *Rhodes*, 393 U.S. 23	8, 9, 10, 12, 14, 23

CONSTITUTIONS AND STATUTES

Alaska	§ 15.05.012 (1968 Supp.)	18
Arizona	A.R.S. § 43-101(p) (1956)	20
California	Rev. & Tax C.A. § 17014 (1956)	20
Colorado	Constitution Art. VII, Sec. 1	5
	49-3-1(c), C.R.S. 1963	5

Constitution and Statutes—Continued

		Page
	49-4-2, C.R.S. 1965	17
	49-13-2, C.R.S. 1965	17
	49-13-4(4), C.R.S. 1963	6
	49-24-1, C.R.S. 1963	4, 6
	49-24-1 *et seq.* 1963	6
	49-24-2, C.R.S. 1963	6, 17
	49-25-13, C.R.S. 1965	6
	138-1, C.R.S. 1963	20
	138-3, C.R.S. 1963	20
	138-4, C.R.S. 1963	20
	House Bill 1214 (1969)	16
Massachusetts	2A Mass 1968 Supp. C 62 § 61(c)	20
Michigan	Const. Art. 2 § 3 (1963)	18
Ohio	Rev. Code Ann. § 3504.01 (1960)	18
Oklahoma	12 O.S. Supp. 1967 § 602	18
	68 Okl. St. Ann. § 2302(j) 1966	20
Nebraska	R.R.S. 1943 § 32-1301 (1968)	18
North Dakota	N.D.C.C. § 16-16-17 (Supp. 1967)	18
Tennessee	Code Ann. § 67-2601 (1955)	20
Wisconsin	Stat. § 71.01 (1967)	20
	W.S.A. 6.15 (1969)	18
United States	Federal Voting Assistance Act, 69 Stat. 584, as amended 82 Stat. 180, 50 U.S.C. § 1451 *et seq.*	2
	Soldiers and Sailors Voting Law, 56 Stat. 753	2

MISCELLANEOUS

115 Cong. Rec. S 5177 (daily ed. May 14, 1969) ... 1, 19

Handbook of the National Conference of Commissioners on Uniform State Laws, pp. 261-70 (1962) 18

Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society*, 61 Mich. L.Rev 823 ... 19

Statement of Attorney General John N. Mitchell, Subcommittee No. 5 of the House Judiciary Committee on H.R. 4249 (June 26, 1969) ... 19, 22

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Interest of Amicus

There are currently some 750,000 American civilians residing abroad who are barred by the laws of the states of which they are citizens from participating in both national and state elections.[1] In a day when so many Americans pursue commercial, educational, and cultural interests overseas, these numerous citizens are disenfranchised by archaic voting laws in a large majority of the states which in terms or in effect require physical presence in the state for exercise of the ballot. On behalf of the large and increasing number of Americans residing abroad, the Bi-

[1] See 115 Cong. Rec. S5177 (daily ed. May 14, 1969).

partisan Committee on Absentee Voting was formed in 1965 by overseas leaders for the Republican Party (Harvey S. Gerry, Chairman; Edward Tuck, Vice-Chairman) and the Democratic Party (Alfred E. Davidson, Chairman; Richard H. Moore, Vice-Chairman, succeeded by David McGovern). They took this initiative when it appeared that in the 1964 Presidential election very few overseas civilians could meet complex and restrictive state voting requirements applicable to non-resident citizens.

Despite the great growth of the overseas population, many states still treat mere removal to an overseas abode as evidencing surrender of state domicile, and others provide absentee registration and voting procedures only for their citizens in government service.[2] The disenfranchisement of voters residing abroad takes many forms, which are reviewed in a compendium of state laws set forth in Appendix A, *infra*, page 26. In three states, voting eligibility even for a bona fide state domiciliary requires his actual presence in the state or the maintenance of a home there. Ohio permits an absent domiciliary to vote for three years but automatically disqualifies him thereafter. Persons resident abroad who lived and voted in one of these states for years, and continue to regard the state as their home, are thus barred from exercise of the franchise.

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[2] State and federal legislation has benefited certain groups living abroad —notably members of the Armed Forces and federal employees—but generally provides no relief to the ordinary citizens whose business or personal needs require them to be traveling or living abroad during an election year. See Soldiers and Sailors Voting Law, 56 Stat. 753 (1942); Federal Voting Assistance Act, 69 Stat. 584 (1955). The Congress recommended in 1968 amendments to the Federal Voting Assistance Act (50 U.S.C. § 1451 *et seq.*) that states adopt simplified absentee voting and registration procedures for all citizens "temporarily residing outside the territorial limits of the United States." Only a few states have so far heeded that recommendation, and even then the simplified absentee procedures do not obviate serious legal problems (reviewed in the text, pp. 2-3) concerning the voting *eligibility* of state domiciliaries residing abroad.

Moreover, in 14 states there are statutes or judicial decisions which appear to recognize that non-resident domiciliaries retain voting eligibility, but these statutes and decisions are so equivocal or qualified that even lawyers would differ over the particular citizen's status to exercise the franchise. And in another 11 states the sworn information required upon absentee registration or voting is hopelessly confusing in its requirement that a specific place of state "residence" be stipulated, and induces the ordinary non-resident to forego the franchise for fear of perjuring himself even though as a domiciliary he is in fact a qualified "resident" voter.

Four states disenfranchise overseas domiciliaries because there is no absentee ballot. Twenty-two states, which generally recognize the voting eligibility of the non-resident state citizen deny him equal voting opportunity because they provide no system of absentee registration. In these states an absent voter who is required to register or to re-register (a normal rule upon failure to vote in two successive elections) has no way of meeting that requirement without returning to the state. Combining these various impediments operative in forty-two states* and the District of Columbia—outright disqualification of the absent state citizen, the discouragement from confusing statutes and decisions and voter verification of residence forms, failure to provide absentee voting or registration—reveals a mere handful of states where a non-resident citizen of the state is clearly entitled and enabled to register and vote either in state or national elections while residing abroad.

This case presents the first major review of state residence requirements curtailing voting eligibility in Presidential elections. This Court's pronouncement on what voting residence requirements a state may impose on its

* Since some states fit into more than one category, the figures set forth herein add up to more than 42 states. See Appendix A, *infra*, p. 26.

citizens who recently moved into the state is likely to affect or control also the ambit of state authority to deny the franchise to those sojourning outside the state. Therefore amicus has an intimate interest in the outcome of the present case and, having obtained written consent from the parties, respectfully submits this brief to assist the Court in its disposition of the issues presented. It is our contention that the ruling below is in error because the state has a Constitutional duty under both Article II and the Fourteenth Amendment to afford all its qualified citizens participation in its Presidential elections irrespective of the length or place of their sojourn. That duty is violated by laws denying the Presidential franchise to new citizens of the state, as well as those which disenfranchise the citizen sojourning abroad.

Statement

The question before the Court concerns the requirement of a Colorado statute that a person "shall have resided in this state not less than six months next preceding" an election of Presidential and Vice Presidential Electors in order to participate therein (49-24-1, C.R.S. 1963). There is a crucial fact concerning that statutory requirement which may require illumination: *the statute's six month "residence" prescription does not require that the voter shall actually have been living in the state for six months before the election or at any previous time.* A person may have been living in Colorado for far longer than six months and yet not have "resided" there within the meaning of the statute; conversely, a person who did not actually live in the state for six months or even six days may still be eligible. That conclusion flows from the law established in Colorado, and in most states of the Union (see Appendix B, *infra*, p. 33), that "residence" for the purpose of voting eligibility means domicile. Judicial rulings and statutory provisions in Colorado follow the general rule that residence does not

require physical presence prior to or during the prescribed period but only the *establishment of state domicile prior to the commencement of that period.*

The Colorado Constitution (Article VII, Section 1) and the statute (49-3-1 (c), C.R.S. 1963) define a person as an eligible voter who "shall have resided in this state not less than one year next preceding the election at which he offers to vote." The landmark Colorado decision applying the domicile test to the requirement of residence for the prescribed term is the 1896 ruling in *Sharp* v. *McIntire*, 23 Colo. 99, 46 P. 115. In reading residence to mean domicile the Court relied on leading early precedents in Massachusetts (5 Metcalf 587 (1842)), Indiana (*French* v. *Lighty*, 9 Ind. 475 (1857)); Rhode Island (*State* v. *Aldrich*, 14 R.I. 171 (1883)); and particularly *Fry's Election Case*, 71 Pa. 302 (1872), which had definitively ruled that "when the Constitution declares that the elector must be a resident of the state for one year, it refers, beyond question, to the state as his home or domicile . . ."

Pursuant to the underlying rule, Colorado decisions hold that voting eligibility "residence" rests upon the intention of the voter to make his home in the state, manifested by some probative act of settlement there. *Jain* v. *Bossen*, 27 Colo. 423, 62 P. 194 (1900); *Kellner* v. *District Court*, 127 Colo. 320, 256 P. 2d 887 (1953). Mere absence from a domicile once established will not defeat the required "residence" if there is no intention to make the place of new abode permanent. *Grey* v. *Huntley*, 77 Colo. 478, 238 P. 53 (1925); *Bullington* v. *Grabow*, 88 Colo. 561, 298 P. 1059 (1931). Moreover, to meet the required residence for the prescribed period it is *not* necessary that the voter have been physically in residence in the state for that period, so long as his intention to make his home in Colorado was timely evidenced by such acts as the purchase of a home, the erection of a business, or the sale of his former home elsewhere. *Kellogg* v. *Hickman*, 12 Colo. 256, 264-266, 21 P.

325 (1888). Even a *single day* of physical presence in the jurisdiction before an election will suffice if the totality of evidence shows that the voter intended to establish domicile prior to the prescribed period. *People* v. *Chrysler,* 83 Colo. 355, 265 P. 92 (1928).

These principles have also been embodied in successive Colorado statutory provisions defining residence for purposes of voter eligibility, presently codified in 49-25-13, C.R.S. 1965. It is there specified that "in determining the residence of a person offering to vote", residence shall be where "his habitation is fixed, and to which, whenever he is absent, he has the intention of returning;" that no loss of residence arises by departure from the state "with an intention of returning;" and that the requisite Colorado residence is not gained by a person "retaining his home or domicile elsewhere." In like vein, section 49-13-4(4) prescribes that a voter challenged for failure to meet the prescribed residence period shall, in the event he was absent from the state during the year, certify under oath whether he intended to return while absent and whether he then continued to "regard this state as your home."

Nothing in the statute before the Court (49-24-1, C.R.S., 1963), which authorizes a person after six months' residence "to vote as a new resident for presidential and vice presidential electors," intimates any departure from the rule that residence means domicile. Accordingly, there remain fully applicable the provisions of section 49-25-13 prescribing a domicile test in determining the residence of a person offering to vote.[3]

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[3] Nor is there any legislative history of the uniform law upon which section 49-24-1 *et seq.* of the Colorado laws is patterned indicating that the drafters intended by residence to denote physical presence within the jurisdiction rather than domicile. See *infra* p. 18 n. 11. It is a fair inference therefore that the drafters did intend residence to denote domicile, consistent with the legislative provisions and judicial rulings in a great majority of the states. See *infra,* Appendix B.

In sum, it is clear that all the Colorado statute requires for eligibility to vote in a Presidential election is *that the voter have acquired his domicile in Colorado not less than six months before the election.* Had appellants, more than six months before the election, established their Colorado domicile by such acts as the purchase of a dwelling there and the sale of their home in California, the statute did not require their physical presence in Colorado for any pre-election period of time. Conversely, even if appellants had physically resided for six months or more in Colorado prior to the election they would not have met the prescribed residence requirement if they had kept their home in another jurisdiction and still intended to return thereto.

For constitutional purposes it is, of course, clear that a citizen "*can instantly transfer his citizenship from one State to another*", by "*actual residence in the place, with the intention that it is to be a principal and permanent residence.*" *Morris* v. *Gilmer* 129 U.S. 315, 328. See also *Sun Printing and Publishing Association* v. *Edwards* 194 U.S. 377; *Williamson* v. *Osenton* 232 U.S. 619. As emphasized in *Paudler* v. *Paudler,* 185 F. 2d 901, 902 (C.A. 5, 1950), *cert. denied,* 341 U.S. 920: "The Fourteenth Amendment of the Federal Constitution provides that, 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.' We take it to be well established that plaintiff was at liberty to instantly transfer her citizenship from Texas to Arkansas and this she might do without necessity and simply from choice. She had a right to select her domicile for any reason that seemed sufficient to her." Thus the question before the Court is *not* whether Colorado may require the physical presence within its borders for six months prior to a Presidential election of one who desires to participate therein. Rather, it is whether the state may bar from participation in its Presidential Elector elections

those who established their state citizenship by acquiring domicile within the state less than six months prior to the election. We submit in the Argument that the Federal Constitution precludes a state from imposing on its bona fide domiciliaries such arbitrary restrictions as a waiting period after acquisition of their state citizenship in order to participate in a Presidential Elector election.

ARGUMENT

I. Only a Paramount Colorado Interest Could Justify Denial to its Genuine Domiciliary-Citizen of the Ballot in a Presidential Elector Election.

In measuring the constitutional validity of state laws governing the franchise, members of this Court have differed sharply concerning the governing standard. On the one hand it seems clear under this Court's recent majority rulings in voting cases, particularly *Williams* v. *Rhodes*, 393 U.S. 23, and *Kramer* v. *Union Free School District*, 89 S.Ct. 1886, that it is the state's burden to justify by a "compelling state interest" any dilution or denial of the fundamental right of the franchise. On the other hand, the concurring opinions of Mr. Justice Harlan in *Williams*[4] and Mr. Justice Stewart in *Shapiro* v. *Thompson*, 89 S. Ct. at 1335, and the dissenting opinion of three justices in *Kramer*, reject so strict a standard and suggest that the state must show compelling grounds only when a challenged

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[4] As stated in Mr. Justice Harlan's more recent dissenting opinion in *Shapiro* v. *Thompson*, 89 S. Ct. 1322, 1344-45:

> "when as in *Williams* v. *Rhodes*, *supra*, and the present case, a classification is based upon the exercise of rights guaranteed against state infringement by the federal Constitution, then there is no need for any resort to the Equal Protection Clause; in such instances, this Court may properly and straightforwardly invalidate any undue burden upon those rights under the Fourteenth Amendment's Due Process Clause. See, *e.g.*, my concurring opinion in *Williams* v. *Rhodes*, *supra*, at 41."

law impairs a specific privilege protected by the Federal Constitution. When it comes to Presidential Elector elections, participation therein is in fact a federal privilege, but the issue is complicated by the circumstance that Article II leaves voter eligibility matters within the state's general authority to determine the means by which its Presidential Electors are chosen. Yet the state's jurisdiction to determine the choice of Presidential Electors must still be exercised in conformity with other constitutional strictures, and will fail when, as in *Williams*, the state unreasonably restricts citizen participation in the election.

For present purposes, however, it is not necessary to resolve the doctrinal difference reflected in the several opinions in *Williams* and *Kramer*. For here the question involves a state law *directly disenfranchising citizens from participation in a general election of Presidential Electors*. As we demonstrate below, such a statute can be justified only by a paramount state interest, both because, (i), the right to participate in a Presidential Elector election is exercised under Article II of the Constitution and protected by the Supremacy Clause from undue state curtailment, and because, (ii), what is at stake is the right to participate in an election of public officials which this Court's decisions have elevated to the highest standing under the Fourteenth Amendment:

(i) Members of Congress and the President and Vice President hold offices established under the Federal Constitution, and the manner of their election is specifically prescribed in Articles I and II and the Twelfth and Seventeenth Amendments. While the Constitution chiefly entrusts to the states the function of conducting such federal elections and prescribing qualifications for participation therein, nevertheless participation is a right directly protected by the Federal Constitution. As emphasized in

Twining v. *New Jersey*, 211 U.S. 78, 97: "*among the rights and privileges of National citizenship recognized by this court are . . . : the right to vote for National officers.*" That proposition has been established law since *Ex parte Yarbrough*, 110 U.S. 651, where this Court upheld the validity of an indictment under a federal statute which protected both Congressional and Presidential elections from interference and corruption. See *Wiley* v. *Sinkler*, 179 U.S. 58; *Swafford* v. *Templeton*, 185 U.S. 487; *United States* v. *Mosley*, 238 U.S. 383; *United States* v. *Classic*, 313 U.S. 299; *Smith* v. *Allwright*, 321 U.S. 649; *United States* v. *Saylor*, 322 U.S. 385.

Nor, as concerns the federal nature of the privilege, does any distinction arise between Congressional elections which are specified by Article I, and Presidential Elector elections which under Article II states might forego for some other method of choosing their Electors.[5] Constitutional norms governing rights of election participation are not rendered inapplicable "simply because, under a different statutory scheme, the offices subject to election might have been filled through appointment." *Kramer* v. *Union Free School District*, 89 S. Ct. 1886, 1890. Once the state has opted for popular election of Presidential Electors it is clear that participation in such an election is a privilege exercised under the Federal Constitution.[6] Presidential Electors perform federal functions under the Federal Constitution. On

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[5] Possibly after the Fourteenth Amendment states may no longer dispense with popular election of Presidential Electors. The Fourteenth Amendment imposes restrictions on states—in its privileges and immunities, due process, and equal protection strictures—which may have reduced the previous ambit of state authority to select Presidential Electors by a process which does not give voice and vote to the citizens of the state. Cf. *Harper* v. *Virginia Board of Elections*, 383 U.S. 663; *Williams* v. *Rhodes*, 393 U.S. 23; *Kramer* v. *Union Free School District*, 89 S.Ct. 1886; but see *McPherson* v. *Blacker*, 146 U.S. 1.

[6] This Court held in *United States* v. *Classic*, 313 U.S. 299, that the right of participation in Congressional elections extends to primaries con-

that premise, in *Burroughs* v. *United States*, 290 U.S. 534, 545, this Court upheld the Constitutional power of Congress to safeguard participation in Presidential Elector elections:

> "In *Ex parte Yarbrough*, 110 U.S. 651, this court sustained the validiy of § 5508 of the Revised Statutes, which denounced as an offense a conspiracy to interfere in certain specified ways with any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States; and of § 5520, which denounced as an offense any conspiracy to prevent by force, etc., any citizen lawfully entitled to vote from giving his support, etc., toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress. The indictments there under consideration charged Yarbrough and others with conspiracies in violation of these sections. The court held, against the contention of the accused, that both sections were constitutional. It is true that, while section 5520 includes interferences with persons in giving their support to the election of presidential and vice presidential electors, the indictments related only to the election of a member of Congress. The court in its opinion, however, made no distinction between the two, and the principles announced, as well as the language employed, are broad enough to include the former as well as the latter . . ."

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ducted under state law, although they are nowhere mentioned in the Constitution. The Court conceded (at p. 316) "that the framers of the Constitution . . . did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary . . .", but found the protections of the Constitution applicable because the *function* of the primary was selection of federal officers. No less than in *Classic*, although popular election of Presidential Electors may not be constitutionally required, once the state has chosen that method, the existence of a federal right of citizen participation flows from the reality that the ultimate function of the election is the selection of the President of the United States.

Clearly, then, where a state provides for popular election of Presidential Electors, this Court's decisions support the proposition that the privilege of participation in such elections is one exercised under Article II of the Federal Constitution and protected by the Supremacy Clause. Cf. *Wesberry* v. *Sanders*, 376 U.S. 1. Accordingly, under the principle recently applied in *Shapiro* v. *Thompson*, 89 S. Ct. 1322 and *Williams* v. *Rhodes*, 393 U.S. 23, the state has a heavy burden to justify denial or curtailment of a right protected by the Constitution. As emphasized in the concurring opinion of Mr. Justice Harlan in *Williams*, the Constitution forbids the state to impose any undue burden on the exercise of a federal right, including the right to participate in "the process by which Presidential Electors are selected" 393 U.S. at 42.[7]

(ii) Even if the right to participate in a Presidential Elector election were not regarded as protected by Article II, the strict standard of review would remain applicable in the present case. For when it comes to the high right of political participation through exercise of the franchise, under the Fourteenth Amendment only a compelling interest will justify any state curtailment. That principle has been

[7] In addition to participation in a Presidential Elector election, which the Colorado statute's waiting period directly invades, the statute indirectly invades another Constitutional privilege. That is the "right to travel", whose restriction by a welfare waiting period this Court found unconstitutional under the "compelling interest" test in *Shapiro* v. *Thomson*, *supra*. As the Court there ruled (89 S.Ct. at 1331): "in moving from State to State . . . appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." Just as in *Shapiro*, appellants in the present case exercised the constitutional right to move—from California to Colorado. And in view of the curtailment of that right by a waiting period before those who have recently become domiciliaries of the state are eligible for the full benefits of state citizenship, the presently challenged statute can be justified only by a compelling governmental interest.

emphatically espoused by this Court, most recently in *Kramer* v. *Union Free School District*, 89 S. Ct. 1886, 1889-1890:

> "'[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.' *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964). See *Williams* v. *Rhodes*, *supra*, at 31; *Wesberry* v. *Sanders*, 376 U.S. 1, 17 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society . . .
>
> "Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. See *Carrington* v. *Rash*, [380 U.S. 89,] 96.
>
> "And for these reasons, the deference usually given to the judgment of legislators does not extend to decisions concerning which resident citizens may participate in the election of legislators and other public officials. Those decisions must be carefully scrutinized by the Court to determine whether each resident citizen has, as far as is possible, an equal voice in the selections."

Within the precise terms of the rule stated in *Kramer*, this is a case where the statute "grants the right to vote to some

bona fide residents of requisite age and citizenship and denies the franchise to others", invoking need for determination "whether the exclusions are necessary to promote a compelling state interest".[8]

* * * * *

In sum, it appears that a substantial majority of this Court holds to the view that a heavy burden of justification for denial of participation in elections falls upon the state, particularly where what is involved is a Presidential election. Whether viewed as a privilege directly protected under Article II of the Constitution or merely as a right secured from arbitrary state intrusion by the equal protection requirement, the central and controlling proposition in the present case appears beyond dispute: The right to participate in a state's election of Presidential Electors is one which under the Constitution the state may not lightly curtail, and which will be justified only by a paramount state interest. In the succeeding discussion we demonstrate that no such state interest underlies the waiting period imposed on new citizens of Colorado for eligibility to participate in a Presidential Elector election.

II. No Tangible State Interest Supports Imposing on Bona Fide New Citizens of Colorado a Waiting Period For Eligibility to Participate in a Presidential Election.

As we have demonstrated in the foregoing point it is the

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[8] We recognize that the dissenting opinion in *Kramer* rejected general applicability of the compelling interest standard to every case of voter disenfranchisement. But we deem it noteworthy that among those participating in the dissent were Mr. Justice Harlan, who concurred in the applicability of the strict standard to a Presidential Elector election in the *Williams* case (see *supra*, p. 8, n. 4), and Mr. Justice Stewart, who indicated in his dissenting opinion in *Williams* (n. 5 at p. 52) that in cases involving "direct popular election of candidates to state or federal office," curtailment of individual voting rights may fall even under the invidious discrimination test.

constitutional burden of the state to justify the statute presently before the Court by a paramount governmental interest. We have also demonstrated in the Statement, *supra*, pp. 4-8, that what the Colorado statute does is simply to impose a waiting period upon bona fide domiciliaries of the state between their acquisition of state citizenship and the exercise of the Presidential franchise. We have underscored the fact that the Colorado "residence" rule *does not require physical presence but only domicile*, so that the statutory waiting period is actually a length-of-citizenship requirement for exercise of the Presidential franchise. There is thus not presented here any question concerning a state's power to require the physical presence of a person within its borders for any period before voting.

Nor is there any question here concerning a possible state interest to make a period of physical presence the test of the *genuineness of domicile*. A state might conceivably impose a period of actual habitation to measure genuineness of domicile for voting purposes, but Colorado has not done so. On the contrary, Colorado and most other states emphasize by judicial decision and legislation that domicile is a function of the intent of the citizen manifested by some act of settlement within the jurisdiction, and length of presence within the state is not determinative *either* for or against the existence of domicile. A somewhat more difficult question might be posed by a statute testing domicile by length of residence within the state, but it is not presented in this case.[9]

[9] A case which does appear to have been premised upon state power to require for voting eligibility physical presence rather than domicile is *Drueding* v. *Devlin*, 234 F. Supp. 721 (D. Md. 1964) aff'd 380 U. S. 125. While Maryland follows the usual rule that voting residence means domicile rather than physical presence (see *Gallagher* v. *Board of Elections*, 219 Md. 192, 148 A. 2d 390 (1959) and cases cited), that fact was not brought to the attention either of the District Court or this Court. Referring to the fact (234 F. Supp. at p. 723) that plaintiffs "will not have lived in Maryland for one year" before the election, the District Court's opinion appears to have assumed that one year's residence under the Maryland law means

What is presented for resolution, as we have stated, is simply a statute which requires that *after* the acquisition of bona fide domicile and thus citizenship in Colorado, a person must wait for a stipulated period before participating in a Presidential election. We proceed to a demonstration that no tangible state interest supports any waiting period imposed on new citizens of the state for eligibility to participate in a Presidential Elector election.

In our view the controlling consideration on the pending question is not the length of the particular waiting period imposed, but the absence of a tangible governmental interest supporting *any* waiting period for citizen-domiciliaries before participation in Presidential elections. So long as the citizen proves his domicile in Colorado prior to the close of registration shortly before the election, we submit there is no state interest whatever also to impose an eligibility period. Accordingly, we do not deem the Constitutional outcome to hinge upon whether the waiting period for participation in a Presidential Elector election is one year (as it was in Colorado before 1963), six months (the statute now before the Court), or two months (as it is under a 1969 amendment of the Colorado law (House Bill 1214)).[10]

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physical presence. Of course, where domicile is not as such required, a state has an understandable interest to require a minimum period of actual habitation within its borders to assure that only persons with some state attachment exercise the franchise. We would, however, suggest that even in such a case the opening sentence of the 14th Amendment—bestowing state citizenship on persons "*in the State wherein they reside*"—contemplates domicile as the test of state citizenship (see *supra*, p. 7) and precludes state adoption of an arbitrary period of physical presence as the controlling standard. Compare *Schneider* v. *Rusk*, 377 U.S. 163.

[10] Since what is critical is not the length of the period but the absence of justification for imposing upon bona fide state citizens *any waiting period at all*, nothing in the recent reduction of the Colorado waiting period moots the ultimate Constitutional objection presently before the Court.

(i) *Fraudulent Claim of State Citizenship.* The District Court in the case at bar postulated that the six month waiting period serves to prevent fraudulent voting and thereby preserves the purity of elections (292 F. Supp. 610, 614 (1968)). But an entirely different means is employed by the state for that purpose; prevention of fraudulent voting is the principal function of the system of voter registration. To vote in Colorado, a person must register not later than the twentieth day before a primary or general election (49-4-2, C.R.S., 1965; 49-24-2, C.R.S., 1963). At such registration he affirms under oath his eligibility to vote and gives the necessary information to test his eligibility. Prior to the election governmental officials, political parties, and private persons may scrutinize the poll books for the purpose of assuring voter eligibility. Colorado has thus decided that the mechanism of registration before the election and possible challenge of voters on election day (49-13-2, C.R.S., 1965) provides the safeguard against voting by persons ineligible for one or another reason, including lack of requisite Colorado domicile.

In contrast to that registration process, the waiting period for voting by new citizens of Colorado is totally unrelated to the prevention of voting fraud. The requirement that all voters have become domiciliaries at least six months prior to the Presidential election adds nothing by way of substantive or procedural assurance to the prevention of fraudulent voting. One whose claim of domicile is false can make that claim with equal cogency, or lack thereof, whether the alleged date of acquisition be six years or six hours before registration closes. And as concerns procedure, even under the present eligibility waiting period the voter may still register shortly before the election, so that the eligibility waiting period adds no time for the *verification* of eligibility. Thus, in the remote circumstance

that domiciliaries of other states should attempt to make false voting claims in Colorado, they are in no way inhibited by the eligibility waiting period.[11]

(ii) *Double voting.* Assuming that a new citizen is qualified to vote in Colorado, is there a danger that unless a waiting period is imposed he will continue to exercise his franchise in the previous state of residence? Whatever may be the magnitude of the double voting danger, it is clear that Colorado's waiting period can in no way serve to lessen it. Whether a voter must wait a year, or six months, or not at all when he begins to vote in Colorado, he may still seek to continue to cast a fraudulent vote in his former state of domicile. While the Colorado waiting period thus totally fails to prevent double voting, a Uniform Act provision does provide a system of notice to a former state upon the voter's application for a ballot in a new state.[12] Plainly, the danger of double voting cannot justify the waiting period here in issue.

(iii) *Knowledge of Local Candidates.* The District Court also postulated a state purpose of ensuring voting by members of the community with interest in and knowledge of Colorado issues and candidates (292 F. Supp. at 614). But since what the statute requires is not presence in Colo-

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[11] That a waiting period is unneeded for the prevention of voting fraud is indicated by its complete abolition in eight states in accordance with the recommendation of the Uniform Act for Voting by New Residents in Presidential Elections (Handbook of the National Conference of Commissioners on Uniform State Laws, pp. 261-70 (1962)). These states are Alaska (Stat. § 15.05.012 (1968 Supp.)); Michigan (Const. Art. 2 § 3 (1963) (no implementing statute)); Nebraska (R.R.S. 1943 § 32-1301 (1968)); North Dakota (N.D.C.C. § 16-16-17 (1967 Supp.)); Ohio (Rev. Code. Ann. § 3504.01 (1960)); Oklahoma (12 O.S. Supp. 1967 § 602); Oregon (Rev. Stat. § 247.410 (1967)); and Wisconsin (W.S.A. 6.15 (1969)). Presumably these states have not been inundated by ineligible non-residents determined at the risk of prosecution to cast their Presidential vote therein rather than their true state of domicile.

[12] Section 3, Handbook, *supra*, n. 11 at 266.

rado but only domicile, the requirement that it have been established at a given point in time is no assurance of familiarity with candidates. In any event, appellants seek to vote in a Presidential Election, where such localism has no application. As the Attorney General of the United States recently testified:

> "A residency requirement may be reasonable for local elections to insure that the new resident has sufficient time to familiarize himself with local issues. But such requirements have no relevance to Presidential elections because the issues tend to be nationwide in scope and receive nationwide dissemination by the communications media. The President is the representative of all the people and all the people should have a reasonable opportunity to vote for him." [13]

Thus neither prevention of fraudulent or double voting nor familiarity with local matters constitute tangible state interests serving to validate this statute. These make-weight points cannot possibly constitute a paramount or compelling state interest to disenfranchise new citizens of Colorado. Indeed, the absence of any tangible safeguard flowing from the waiting period imposed is underlined by the fact that a direct and immediate test of domicile applies in Colorado in its imposition of taxes on bona fide citizens of the State. The arbitrary nature of the waiting period for exercise of the franchise imposed on new citizens of Colorado is underscored by the fact that no such periods apply to the major burdens of state citizenship. The three principal duties imposed by Colorado upon domiciliaries are the

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[13] Statement of Attorney General John N. Mitchell before Sub-committee No. 5 of the House Judiciary Committee on H.R. 4249, p. 16 (June 26, 1969). See also 115 Cong. Rec. S5177 (daily ed., May 14, 1969); Schmidhauser, *Residency Requirements for Voting and the Tensions of a Mobile Society*, 61 Mich. L. Rev. 823, 828 (1963).

inheritance tax (138-3, C.R.S., 1963), the gift tax (138-4, C.R.S., 1963) and the income tax (138-1, C.R.S., 1963). As in the case of the voting provisions, the controlling statutory term for tax purposes is "resident" and again it means domiciliary. See *People ex rel Rogers* v. *Estate of Waterman*, 108 Colo. 263, 116 P. 2d 204 (1941).[14]

The income tax, for instance, is imposed upon every resident individual defined to include "a natural person who is domiciled in this state" (138-1-2, C.R.S., 1965). The inheritance tax specifically applies to a person who upon his death "shall have been a citizen of Colorado, sojourning outside of this state", and attaches a presumption of domiciliary status to one who declared himself to be a resident or citizen in his last will, *"whether or not such person may or may not have voted or have been entitled to vote . . . in this state"* (138-3-5, C.R.S., 1963, italics supplied). With respect to all three taxes upon domiciliaries, they may be avoided upon issuance of a "certificate of non-residence" for one who proves his Colorado residence to be merely temporary and shows his domicile elsewhere. See 138-1-76 *et seq.*, C.R.S., 1965. Proof of such domicile elsewhere requires showing a permanent place of abode and voting eligibility outside Colorado (138-1-78, C.R.S., 1965).

These provisions make clear that the signal burdens of state citizenship—inheritance, gift, and income taxes—are all applicable to Colorado domiciliaries immediately upon acquisition of their state domicile. When it comes to the payment of taxes the state applies no waiting period; the new Colorado citizen is immediately subject to the burdens

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[14] Colorado is illustrative of numerous other states which impose tax burdens on presons immediately upon their acquisition of domiciliary status. See, e.g., Arizona (A.R.S. § 43-101(p) (1956)); California (Rev. & Tax C.A. § 17014 (1956)); Massachusetts (2A Mass. 1968 Supp. C.62 § 61 (e)); Oklahoma (68 Okl. St. Ann. § 2302 (j) (1966)); Tennessee (Code Ann. § 67-2601 (1955); Wisconsin (Stat. § 71.01 (1967)).

of citizenship while still denied the privilege of the franchise where the prescribed waiting period has not elapsed.

We do not, of course, mean to suggest that the Fourteenth Amendment imposes any inexorable "no taxation without representation" rule. But we do suggest that a state has an extra burden to justify imposition of voting waiting periods on its new citizens when it vests upon them the full burdens of state citizenship without any delay. As we have demonstrated, Colorado falls far short of meeting any reasonable burdens of justification for its Presidential-election eligibility waiting period. The double standard which Colorado attaches as between the privilege of the franchise and the burdens of taxation adds the ultimate insult to the Constitutional injury exposed in the present case.

III. Widespread Disenfranchisement Under Existing Voting Residence Laws Calls for Recognition of the State's Constitutional Duty to Afford all its Qualified Citizens full Opportunity for Participation in Presidential Elector Elections Irrespective of the Length or Place of Their Residence or Sojourn.

Under the established constitutional standard the absence of any paramount state interest supporting the Colorado waiting period presently before the Court should be dispositive of the narrow question at bar. But since this case is the first to present frontally the question of state power to restrict the popular franchise in Presidential Elector elections, the Court may desire to elaborate a general constitutional standard applicable to state restriction of the Presidential franchise. Some guidelines in that area are very much in order in view of the fact that existing state voter residence laws are a welter of confusion and inconsistency which effectively deny the Presidential ballot to millions of bona fide citizens.

Thus, the waiting period now before the Court is but one of the residence provisions which unreasonably restrict the Presidential franchise. Many states have not yet recognized the special nature of Presidential elections and simply apply the onerous length-of-domicile requirements applicable to state and local elections. As a consequence of the various waiting periods imposed upon bona fide state citizens for participation in elections, 5.5 million persons were denied the right to vote for the President of the United States in the 1968 elections merely because they moved their domicile from one state to another in the months preceding the national election.[15]

Numerous citizens living or traveling abroad during the election year are similarly denied the Presidential franchise under existing state voting laws. As we have emphasized, *supra*, pp. 2-3, a great majority of the states in one fashion or another deny the vote to such citizens—at best the state law recognizes the voting needs of the citizen abroad on election day but fails to provide a workable system to fill the need; at worst state statutes simply fail to provide absentee voting or registration, and some completely bar those not physically present or residing in the state.

Whatever may be said in defense of a particular legislative scheme, an overview of the situation in all fifty states shows that there has been no general effort by states to assure their qualified citizens opportunity to participate in Presidential elections. The authors of the Constitution committed to the tender mercies of state legislatures the method for selection of Presidential Electors and public election has become the accepted method, but vast numbers of qualified voters are excluded from such elections simply because their state citizenship was recently acquired or because they are traveling or residing outside the state of

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[15] Statement of Attorney General Mitchell, *supra*, p. 19.

their citizenship. So widespread a default upon state obligations fairly implied from Article II of the Constitution requires more than piecemeal relief. What is required is announcement of a Constitutional standard imposing upon the state the duty to make available to all its bona fide and qualified citizens full and fair opportunity to participate in its Presidential Elector elections regardless of the length or place of their sojourn.

Such a duty, we submit, would comport with the understanding of the Founding Fathers. True, they left to the state legislature's discretion the means by which Presidential Electors were to be chosen and conceivably Electors might still be selected by appointment rather than the popular franchise, Cf. *supra*, p. 10, n. 5. But it is the high constitutional function of the Electors to choose the President of the United States, and once popular election is used as the method of selection then an *unrepresentative election* of those who will choose the President of the United States is more than Article II will tolerate.[16] The historic reapportionment rulings of this Court rest on the premise that arbitrary curtailment of voters' rights is antithetical to the very concept of popular election. See *Reynolds* v. *Sims*, 377 U.S. 533, 562. Where the Electors who choose the highest officer in the land are to be elected by popular franchise, it seems axiomatic that Article II precludes discriminatory restrictions, imposition of a poll tax, a length-of-domicile waiting period, or any other provision denying competent adult citizens the Presidential franchise. Whether the disenfranchisement results from a

[16] Even this Court's landmark ruling upholding the wide ambit of state discretion under Art. II, Section 1, assumed the egalitarian norm as applicable. As the Court stated in *McPherson* v. *Blacker*, 146 U.S. 1, 40: "If presidential electors . . . are elected in districts where each citizen has an equal right to vote the same as any other citizen has, no discrimination is made." Cf. Concurring opinion of Mr. Justice Harlan in *Williams* v. *Rhodes*, 393 U.S. at 42-43.

state restricting the vote or simply from the failure of the state to make the ballot available should make no constitutional difference. State inconvenience is no excuse, for it is the duty of the state legislature to exercise its power under Article II in such manner that Presidential Electors are chosen in a fair and representative fashion.

As we approach the 200th anniversary of the Republic it is high time for recognition of the state's constitutional duty to enfranchise all its qualified citizens in Presidential elections. This Court's affirmation of such a constitutional duty would be decisive both on the narrow question now before the Court and on the variety of state voting laws disenfranchising citizens traveling or residing abroad. Clearly, the duty to afford the federal franchise to qualified citizens is violated by the statutes which require the domiciliary to be present at the election or to maintain a home within the state (see *supra*, p. 2).[17] Equally clearly, the state has not met its duty of enfranchisement (see *supra*, p. 3) where burdens of proof of domicile are so onerous upon the voter, or the form of oath concerning domicile is so misleading, as to discourage bona fide domiciliaries from absentee voting or registration.

Finally, the state's enfranchising obligation is equally violated where the lack of absentee voting or registration machinery has the effect of denying the ballot to the citizen who cannot be present at the time of the registration or

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[17] In effect such statutes treat as an automatic relinquishment of state citizenship the taking up of residence outside the state. So harsh a rule may invoke the principle applied to the forced surrender of national citizenship in *Schneider* v. *Rusk*, 377 U.S. 163. There, in striking down as arbitrary, an automatic forfeiture of citizenship from a period of residence abroad, this Court emphasized that "A native-born citizen is free to reside abroad indefinitely without loss of citizenship. . . . Living abroad, whether the citizen be naturalized or native born, is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance. It may indeed be compelled by family, business, or other legitimate reasons." (377 U.S. at 168, 169).

election (see *supra*, p. 3). We live, after all, in a mobile society wherein it is common knowledge that citizens are required for business or personal reasons to be absent from the state for frequent and even extensive periods. In view of that reality of Twentieth Century life, state failure to provide absentee voting and registration has too obvious a disenfranchising impact to survive under some purported distinction between legislative nonfeasance and misfeasance. Whatever may be the rule with respect to local elections, when it comes to electing the President of the United States it is the clear Constitutional obligation of the state to refrain from disenfranchising its absent domiciliaries either by legislative disqualification or failure to make the ballot reasonably available. We urge that this Court declare in clear terms the obligation of the state to make participation in its Presidential Elector elections available to all qualified citizens of the state irrespective of the length or place of their residence or sojourn.

Conclusion

For the foregoing reasons it is urged that the Court should reverse the ruling below.

Respectfully submitted,

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APPENDIX A

Forty-two states and the District of Columbia effectively disenfranchise or impair the ability of nonresident domiciliaries to vote. Illinois, Louisiana, and New York require a voter's actual presence or maintenance of a home in the state, thereby rendering overseas domiciliaries ineligible. Ohio allows temporary absentees to vote for three years but no longer. Fourteen states appear to recognize the voting eligibility of nonresident domiciliaries but have statutes, decisions or an Attorney General's Opinion which raise doubts regarding that eligibility. Eleven states require the execution of absentee registration or voting forms which confuse voters by requiring a state "residence," thereby inducing nonresident domiciliaries to forego the franchise for fear of perjuring themselves. Finally, twenty-three states disenfranchise these voters by failing to provide absentee registration, absentee ballots, or sufficient time in which to cast an absentee ballot.[18]

1. The following 3 states require physical presence or the maintenance of a home within the state in order to vote:

State	*Authority*
Illinois	*Stein* v. *County Board of School Trustees*, 85 Ill. App. 2d 251, 229 N.E. 2d 165 (1967); *Clark* v. *Quick*, 337 Ill. 424, 36 N.E. 2d 563 (1941)
Louisiana	*Estopinal* v. *Michel*, 121 La. 879, 46 So. 907,908 (1908); Opin. Att'y Gen. to Bipartisan Committee (July 29, 1966): "The place where one *regards* as his home is unimportant; where he actually resides is the determining factor."
New York	Letter from Secretary of State to Office of Information, Department of Defense (May 27, 1969): " . . . for a civilian to vote by absentee ballot he must retain a permanent residence within the State of New York [unless voter is employed by the United States]"

[18] The sub-totals add up to more than 42 states and the District of Columbia because several states fit into more than one category.

Ohio permits a voter to retain his eligibility to vote while absent from his home "for temporary purposes." However, "temporary purposes" is defined as "a period of absence not in excess of 3 years." (Ohio Rev. Code Ann. §3503.02 (1960))

2. Fourteen states appear to recognize the voting eligibility of nonresident domiciliaries but have statutes, decisions, or the opinion of an Attorney General which raise doubts regarding that eligibility. Thirteen of those states have a statute or decision approximately as follows: "If a person removes to another state as a place of permanent residence, with the intention of remaining for an indefinite time, he loses his residence in this state, notwithstanding that he entertains an intention of returning at some future period."

State	*Authority*
Arizona	A.R.S. §16-925 (1956)
California	West's Ann. Elec. Code §14287 (1961)
Delaware	Del. Code Ann. 15 §4947 (Supp. 1968)
Indiana	Ann. Ind. Stat. §29-4803 (1969)
Kentucky	K.R.S. Ann. 117.610 (1963)
Minnesota	M.S.A. §201.26 (1962)
Montana	Rev. Code of Mont. 1947 §23-522 (1967)
Nebraska	R.R.S. 1943 §32-475 (1968)
Nevada	NRS 293.500 (1967)
New Hampshire	*Felker* v. *Henderson*, 78 N.Hamp. 509, 102 A. 623, 624 (1917)
North Carolina	Gen'l. Stat. N. Car. §163-57 (Supp. 1967)
Pennsylvania	25 P.S. §2814 (1963)
Utah	Utah Code Ann. 20-2-14 (1969)

Although New Jersey's decisional law (see Appendix B) indicates that residence equals domicile for voting purposes, the Attorney General of the State of New Jersey wrote to the Bipartisan Committee on May 11, 1966, as follows: " . . . in order to have a voting residence in this State it is necessary that a person possess an intention to make this State his home for an indefinite period and, in addition, he must have a residence to which he is entitled to return at

will. For instance, if a person rents an apartment and subsequently leaves the State, and that person no longer has a fixed address in New Jersey, he is not a domiciliary who is entitled to vote irrespective of his intentions."

3. Eleven states require the execution of absentee registration or voting forms which confuse voters by requiring a state "residence", thereby inducing nonresident domiciliaries to forego the franchise for fear of perjuring themselves:

State	*Form*
Arizona	A.R.S. §16-143(B) (Supp. 1968) (Absentee Registration): "My place of residence is ——— precinct, ——— street, city of ———, county of ———, state of Arizona" §16-143(A) (Supp. 1968) describes the required residence as "actual place of residence."
Colorado	49-4-17 C.R.S., 1965 (Absentee Registration): "I . . . shall have resided in the state of Colorado at least twelve months, in the county of——— at least ninety days, and in precinct ——— at least twenty days before the election."
Hawaii	Haw. Rev. Stat. §11-4 (1968) (Absentee Registration): "8. I have resided in the State of Hawaii not less than one year and in the ——— representative district not less than three months, immediately preceding this date on which I now offer to register. . . . 10. The residence stated in item 8 of this affidavit is not simply because of my presence in Hawaii but has been acquired with the intent to make Hawaii my legal residence . . ."
Idaho	Idaho Code §34-807 (1963) (Absentee

	Registration): "I do swear . . . that I have . . . actually resided in this state for six months, and in this county for thirty days next preceding the next ensuing _____ election . . ."
Minnesota	M.S.A. 207.19 (Supp. 1969) (Absentee Ballot): "His home and place of residence is and on said election days will be at _____ in the _____ of _____ (Town, City or Village) County of _____ State of Minnesota."
South Dakota	S.D.C.L. 1967 §12-4-7 (Absentee Registration): ". . . I reside in the _____ precinct in the city of _____, at _____ street number, _____ street (or town, or _____ township), and in the _____ independent school district, in _____ county; . . ."
Tennessee	Tenn. Code Ann. §2-1604 (Supp. 1968) (Absentee Ballot): "I _____ hereby declare that my fixed residence is _____ (street address) (city or town) _____, Tennessee;" (county)
Vermont	17 V.S.A. §126 (1968) (Absentee Ballot): "State of Vermont County of _____ . . . I am a resident, a citizen and a legal voter of the town (city) of _____; county of _____."
West Virginia	W.Va. Code Ann. §3-3-3 (Supp. 1968) (Absentee Ballot): "I, _____, hereby declare that I am now, or will have been, a resident of the State of West Virginia for twelve

months, and of the county of _____ for sixty days next preceding the date of the ensuing election to be held on the _____ day of _____, 19____; that I am now a resident of election precinct No. _____ . . . Home address of applicant _____ P. O. address to which ballot is to be sent _____"

Wisconsin — W.S.A. 6.87 (Supp. 1969) (Absentee Ballot) ". . . I am a resident of the _____ precinct of the (town) (village) of _____, or of the _____ ward in the city of _____, residing at _____ in said city, the county of _____, state of Wisconsin, . . ."

Wyoming — Wyo. Stat. §22-158 (1959) (Absentee Registration): "I do solemnly swear . . . that I will have actually and not constructively been a bona fide resident of [Wyoming] one year and of said county sixty days, and of election district No. _____ in said county ten days preceding the next election; that I am an actual resident of ward No. _____ . . . that my address is _____ (within) (not within) the limits of an incorporated city or town . . ."

4. Twenty-four states do not provide the civilian overseas voter with absentee registration, absentee ballot, or sufficient time to cast an absentee ballot:

(a) Absentee Ballot:

Alabama — Title 17 §64(16)(23)(Supp. 1967); Title 17 §64(24) (1958 Code Recomp.)

Michigan — M.C.L.A. §168.758 (1967)

Mississippi — Miss. Code §3196-01 (1957); §3203-11 (Supp. 1968)

South Carolina	Cf. S.Car. Code Law §23-441 *et seq.*, 23-449.31 *et seq.* (Supp. 1968)

(b) Absentee Registration

Alabama	Title 17 §26 (Supp. 1967)
Arkansas	Ark. Const. Amendment 51 (Supp. 1967)
Connecticut	Conn. Gen'l. Stat. Ann. §9-20 (Supp. 1969); §9-26 (Supp. 1969)
Delaware	Del. Code Ann. 15 §1722 (Supp. 1968); cf. 15 §1901 *et seq.*
District of Columbia	D.C. Code §1-1107 (1967)
Florida	F.S.A. §98.501 (Supp. 1969)
Louisiana	LSA-R.S. 18:40 (1969)
Maine	21 M.R.S.A. §71 (1965)
Maryland	Ann Code of Md. Art. 33 §§3-1, 3-2, 3-7 (Supp. 1968)
Massachusetts	M.G.L.A. 51 §42 (Supp. 1969)
Mississippi	Miss. Code §3196-06 (1957)
Missouri	V.A.M.S. §113.240 (Supp. 1968); cf. 112.310 1966
Montana	Rev. Code of Mont. 1947 §23-503 (1967)
Nevada	NRS 293.517; cf. 293.553 (1967)
New Jersey	N.J.S.A. 19:31-6 (1964)
North Carolina	Gen'l. Stat. N.Car. §§163-67, 163-68 (Supp. 1967); cf. §163-245 *et seq.*, (Supp. 1967)
Ohio	Ohio Rev. Code Ann. §3503.11 (Supp. 1968); §3503.27 (1960)
Oklahoma	26 Okl. St. Ann. §93.4 (Supp. 1968); cf. 26 Okl. St. Ann. §345.1 (Supp. 1968)
Pennsylvania	25 P.S. §951-18 (1963); cf. 25 P.S. §§951-18.1, 951-18.2 (Supp. 1969)
Rhode Island	Gen'l. Laws of R.I. §17-9-7 (Supp. 1966); cf. §§17-9-10, 17-9-11, 17-9-25 (Supp. 1966)
South Carolina	S.Car. Code Law §23-63 (Supp.

	1968); cf. §23-441 *et seq.* (Supp. 1968)
Virginia	Code of Va. Ann. 1950 §24-68; cf. 24-345.1 *et seq.* (1969 replacement)

(c) A nonresident domiciliary of Iowa living overseas is required to apply for an absentee ballot no sooner than 20 days prior to the election (Iowa Code Ann. §53.2 (Supp. 1969)). Within these twenty days prior to the election the absentee ballot must also be sent to the voter, the ballot must be voted and must be returned to the election official prior to the election (Iowa Code Ann. §53.17 (1949)).

APPENDIX B

The term "residence" for the purpose of voting eligibility means "domicile" in 46 states. Illinois and Louisiana do not equate the terms for voting purposes and the law of Hawaii, Nevada and the District of Columbia is unclear on the matter. However, as Appendix A demonstrates, the vast majority of state domiciliaries living abroad are nevertheless effectively disenfranchised.

1. The 46 states are:

State	*Authority*
Alabama	Code Ala. 17§17 (1958)
Alaska	Alas. Stat. §15.05.020 (Supp. 1968)
Arizona	A.R.S. §16-925 (1956)
Arkansas	*Wilson* v. *Luck*, 201 Ark. 594, 602, 146 S.W. 2d 696 (1941)
California	West's Ann. Elec. Code §14282 (1961)
Colorado	45-25-13 C.R.S., 1965; *Sharp* v. *McIntire*, 23 Colo. 99, 46 P. 115 (1896)
Connecticut	9 Op. Att. Gen. 138 (1916)
Delaware	*State* v. *Frest*, 4 Del. 558 (1847)
Florida	1953-54 Op. Att'y Gen. 75
Georgia	Ga. Code Ann. §34-103 (aa) (Supp. 1968)
Idaho	Idaho Code §34-1021 (Supp. 1967)
Indiana	*Yonkey* v. *Cornelson*, 27 Ind. 236, 245 (1866); *Maddox* v. *State*, 32 Ind. 111, 112 (1869)
Iowa	*Dodd* v. *Lorenz*, 210 Iowa 513, 231 N.W. 422, 424 (1930)
Kansas	K.S.A. 25-407 (1964)
Kentucky	K.R.S. Ann. 117.610 (1963)
Maine	1959-60 Att'y Gen. Rep. 158
Maryland	*Gallagher* v. *Board of Elections*, 219 Md. 192, 148 A. 2d 390, (1959)
Massachusetts	*Lincoln* v. *Hapgood*, 11 Mass. 350 (1814)

Michigan	*Harbaugh* v. *People ex rel Cicott*, 33 Mich. 241, 252 (1876); *Reaume and Silloway, Inc.* v. *Tetzlaff*, 315 Mich. 95, 99, 23 N.W. 2d 219 (1946)
Minnesota	M.S.A. §201.26 (1962)
Mississippi	*Smith* v. *Deere*, 195 Miss. 502, 505, 16 So. 2d 33 (1943)
Missouri	*Chomeau* v. *Roth*, 230 Mo. App. 709, 718, 72 S.W. 2d 997, 999 (1934)
Montana	Rev. Code of Mont. 1947 §23-522 (1967)
Nebraska	R.R.S. 1943 §32-475 (1968)
New Hampshire	RSA 54:10 (1955)
New Jersey	*State* v. *Benny*, 20 N.J. 238, 252 (1955); *Cadwalader* v. *Howell*, 18 N.J.L. 138, 145 (1840)
New Mexico	Const. Art. VII, §4; N.Mex. Stat. Ann. §3-2-50 (1953); *Berry* v. *Hull*, 6 N.Mex. 643, 30 P. 936 (1892)
New York	*Application of Woolley*, 108 N.Y.S. 2d 165, 168 (1951); *Matter of Rooney*, 172 App. Div. 274, 278, 159 N.Y.S. 132 (1916)
North Carolina	Gen'l Stat. N.Car. §163-57 (Supp. 1967)
North Dakota	*Nelson* v. *Gass*, 27 N.D. 357, 146 N.W. 537, 543 (1914)
Ohio	Ohio Rev. Code Ann. §3503.02 (1960)
Oklahoma	*Jones* v. *Burkett*, 346 P. 2d 338, 341 (1959)
Oregon	ORS 250.410 (1967)
Pennsylvania	25 P.S. §2814 (1963)
Rhode Island	*State* v. *Aldrich*, 14 R.I. 171, 174 (1883); *Opinion of the Justices*, 65 R.I. 451, 453, 16 A. 2d 331 (1940)
South Carolina	*Clarke* v. *McCown*, 107 S. Car. 209, 92 S.E. 479, 480 (1917)
South Dakota	Report of Att'y Gen. 1961-62, pp. 77, 79

Tennessee	*Brown* v. *Hows*, 163 Tenn. 178, 182, 42 S.W. 2d 210, 211 (1931)
Texas	V.A.T.S. Election Code art. 5.08 (1967)
Utah	Utah Code Ann. 20-2-14 (1969)
Vermont	1963 Op. Att'y Gen. 106, 108
Virginia	*Kegley* v. *Johnson*, 207 Va. 54, 147, S.E. 2d 735, 737 (1966)
Washington	RCWA 29.01.140 (1965)
West Virginia	*Peck* v. *City Council*, 150 W. Va. 580, 591, 148 S. E. 2d 700, 707 (1966)
Wisconsin	W.S.A. 6.10 (1967)
Wyoming	Wyo. Stat. §22-118.3(k) (Supp. 1967)

2. Residence requires physical presence within the state and therefore does not mean domicile for voting purposes in Illinois (*Stein* v. *County Board of School Trustees*, 85 Ill. App. 2d 251, 229 N.E. 2d 165 (1967); *Clark* v. *Quick*, 377 Ill. 424, 36 N.E. 2d 563 (1941) and Louisiana (*Estopinal* v. *Michel*, 121 La. 879, 46 So. 907, 908 (1908); letter of Louisiana Attorney General to Bipartisan Committee on Absentee Voting dated July 29, 1966).

3. The issue is undecided in Hawaii (*In the Matter of Irving*, 13 Haw. 22, 25 (1900)), Nevada (Const. Art. 2§1, NRS 10.020, 293.495, 293.500 (1967) and the District of Columbia (D.C. Code §1-1102 (1967)).